

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2946 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KRISHNA KESHAV LABORATORIES LTD.

Versus

ASHWINBHAI G RAVAL

Appearance:

NANAVATI ASSOCIATES for Petitioner

MR NR SHAHANI for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 30/06/98

ORAL JUDGEMENT

#. Rule. Mr.N.R.Shahani waives the notice of rule.
Krishna Keshav Laboratories Ltd. has prepared to present this petition to challenge the interim order passed by the Industrial Tribunal,Ahmedabad in complaint (IT) No.194/95 in Reference (IT) No.182/90 on 7th February,1997. The respondent is working as wireman with the present petitioner. It is the case of the petitioner that the respondent had committed misconduct by

disobeying the orders of his superior as well as by threatening the superiors on 2nd October,1995 and 4th October,1995 and therefore the petitioner was compelled to dismiss him with reserving its right to seek permission of the labour court for granting approval for said action and if necessary to prove the misconduct against the respondent delinquent workman and to justify the order of dismissal. Before this action was taken, already a reference was pending before the Industrial Tribunal on account of various demands made by the labour Union Gujarat Mazdoor Panchayat.

#. After passing of the said dismissal order on 4-10-95, the respondent filed his complaint bearing No.194/95 before the industrial tribunal of Ahmedabad contending therein that the said dismissal order is illegal and improper and therefore to direct reinstatement of him with full backwages. Along with the said complaint, he also gave an application for getting interim relief. The claim of the respondent was resisted and contested by the present petitioner before the industrial tribunal and it was contended that the petitioner wants to lead evidence to show that they were justified in passing the order of dismissal and that the order of dismissal passed by them was legal and valid. The petitioner also contended that they want to show and prove that their order of dismissal is valid and legal. If the petitioner succeeds in proving that order of dismissal was justified before the Industrial Tribunal, then it would relate back to the final date of the final date of dismissal. But if they happen fail in showing the same, the said justification or proving of dismissal order being correct before the industrial tribunal then the respondent will be entitled to be reinstated in service either with full back wages or as per order passed by the industrial tribunal. There is no question of granting of interim relief and therefore the claim of the interim relief should be rejected.

#. The learned industrial tribunal has passed a detailed reasoned order and has granted interim relief by ordering and directing the present petitioner to give the respondent subsistence allowance till the final decision of the complaint lodged by him by its order dated 7th February,1997. This present writ petition is filed against the said interim relief granted by the industrial tribunal.

#. It is vehemently urged before me by the learned advocate for the petitioner that as law settled today if the employer proves before the industrial tribunal that

they were justified in passing the order of the dismissal of the respondent, holding of the said justification will relate back to the dismissal order passed by the employer and consequently there was no justification on the part of the industrial tribunal in granting the said interim relief. There is no dispute of legal position that if the industrial tribunal happen to come to the conclusion that the employer was justified in passing the order of dismissal, the said finding recorded by the industrial tribunal will relate back to the date of order of dismissal passed by the employer. It is admitted position that delinquent workman has been dismissed without holding any departmental inquiry as is contemplated by the provisions of Industrial Disputes Act as well as as per the principles of natural justice. No doubt, the law permits the employer to prove and show that there was justification in passing the order of dismissal without inquiry. But today it is not possible to say and predict what would be the result of the inquiry before the industrial tribunal. The industrial tribunal was considering the application for granting interim relief in a proceeding under Section 33 A. It is settled law that while considering the claim under Section 33 & 33-A, the court has got inherent jurisdiction to grant the interim relief as befitting to the facts of the case. Now in the circumstances of the case, the court has found that in view of the holding of a detail inquiry, the workman, should get subsistence allowance and not the full wages and allowances. As stated earlier the legal position stands today is that the finding which the industrial tribunal is going to record, will relate back to the date of original dismissal order. Therefore, when the said decision will relate back to the date of dismissal, it is quite obvious that workman will not be entitled to get wages from the date of order of dismissal in case the industrial tribunal holds that the order of dismissal is proper. But in case if the industrial court happen to come to the conclusion that the employer was not justified in passing the order of dismissal then he would normally be entitled to get full wages from the date of the order of dismissal. Therefore in view of this legal position, when the industrial court was pleased to hold that the workman is entitled to get the subsistence allowance, the industrial court ought also to have protected the interest of the employer by making it quite clear that the subsistence allowance is to be paid subject to the conditions that if the industrial tribunal holds that the employer was justified in passing the dismissal order then the workman will be bound to return the amount of subsistence allowance paid to him and in case employer

fails to prove its claim then the amount paid is to be adjusted towards amount payable to employee and to protect the interest of employer, it ought to have stated that the said amount of subsistence allowance deposited by the employer, should be paid to the respondent workman only on furnishing surety to the satisfaction of the industrial tribunal. If such position is made quite clear by passing appropriate order by protecting the interest of the employer, then it could not be said that ordering or granting subsistence allowance is illegal and invalid. It is not known as to how much time will be required in passing the final decision in the matter. After all, the respondent is workman and he is not also employed anywhere else therefore, in the circumstances, if the industrial court is think it proper to allow him to draw the subsistence allowance during the pendency of the proceeding, then it could not be said that the said discretion exercised by the industrial court either perverse or illegal or unjustified so as to interfere with the same by this court by exercising the powers under Article 226 & 227 of Constitution of India. As stated earlier, the Industrial Court has only not taken care to see that the interest of the employer is protected and if that mistake or error committed by the industrial court, is corrected by this court by exercising its discretionary powers, then there would not be causing of any injustice to the employer in maintaining the said order passed by the industrial court.

#. The learned advocate for the petitioner has cited before me the judgement of the division bench of this court delivered in C.A. No.11472 of 1997 in LPA No.1528 of 1997 & CA No.11473/97 in LPA No.1539/97. In the above said LPA, the order of the learned single judge was in challenge and the said order which is quoted on Page-2 of the said judgement is running as under :

"In my view, the alternative submission by Mr.Mansuri is reasonable. This is a case where subsistence allowance is prayed by the employees and the matters have been pending for quite some time. No prejudice will be caused to the petitioner - bank if the amounts are directed to be deposited by way of a term for granting stay of this order. Hence , it is directed that, in case the bank wants to carry this order in appeal, this order will remain strayed for a period of four weeks, provided thee bank deposits the entire amounts due under the orders of the lower courts in the labour Court within two weeks

from today (instead of paying directly to the employees as directed in the earlier part of this judgment). Mr.Mansuri states that the amounts so deposited will not be withdrawn for a period of four weeks."

If the above quoted order is taken into consideration, then it would be quite clear that in that case while granting the subsistence allowance, the learned single judge had not taken care to protect the interest of the employer by ordering amount of subsistence, is to be paid on condition that it is returnable in case, if ultimately it is found that the order of dismissal passed initially by the employer was correct and payment is to be made on giving surety to the satisfaction of the court. Because of the absence of the protection of the employer, the division bench of this court has interfered with the said judgment delivered by the single judge and therefore in the circumstances, the said judgment is not applicable to the facts and circumstances of this present case. In my opinion by passing the appropriate order as indicated above, if the interest of the employer is properly protected then there will be justification in passing the order of paying subsistence allowance. I therefore hold that the present petition will have to be partly allowed only to the effect as indicated above. Therefore, I order that the order passed by the industrial tribunal, Ahmedabad of dated 7th February,1997 is set aside and in its place following order is passed.

"The respondent employer - Krishna Keshave Laboratories Ltd. do pay / deposit the amount of subsistence allowance in this court (Industrial Tribunal of Ahmedabad from the month of May,1995 onwards as per the rules. The said amount of subsistence is to be paid to the original complainant Shri Ashwinbhai G. Raval on his furnishing the surety to the satisfaction of this tribunal and on the condition that in case if ultimately it is found in the inquiry by this industrial tribunal that the employer was justified in passing the order of the dismissal on 4th May,1995, then he will have to return the said amount paid to him by way of subsistence allowance. In case if after the final inquiry,it is found that the employer was not justified in passing the said order of dismissal then the said amount need not be returned and it would be adjusted towards his dues and surety furnished by

him will stand discharged." 1/3 (one third) of arrears payable towards the subsistence allowance from the date of the dismissal till today should be deposited within 3 (three) weeks. The remaining arrears should be paid by further 2 (two) installments payable within two weeks each thereafter and the subsistence allowance from July,1998 should be paid regularly. The industrial court should complete the inquiry as early as possible and preferably within 6 months from today.

Dt : 30-6-1998 (S.D.Pandit, J.)
(KPP)